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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

| EXAMINER | |
|---|---|
| NELSON, MICHAEL B | |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/580,831 | KANZAKI, KEIZOU | |
| | Examiner | Art Unit | |
| | MICHAEL B. NELSON | 1794 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *23 April 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-3 and 6-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3 and 6-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *02/20/09*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

### *Response to Amendment*

1. Applicant's amendments filed on 04/23/09 have been entered. Claims 1-3 and 6-15 are currently under examination on the merits. Some of the previous 112 2nd paragraph issues have been withdrawn as a result of applicant's amendments however some rejections remain. Applicant's newly filed IDS is accepted.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites the phrase "pigment void parts" which is vague and indefinite in that it is unclear how a pigment can be utilized to create a "void part." It appears from the drawings that the two corresponding patterns are meant to be a first pattern having pigmented areas and non-pigmented areas and a second pattern having pigmented areas and non-pigmented areas wherein the pigmented areas of the second pattern overlap the non-pigmented areas of the first pattern and vice-versa. Hence it is unclear how the "void parts" which are considered to be void like in that they lack pigment, can be made up of pigment.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

> such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1, 3, 6, 11, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oshima et al. (U.S. 4,834,247), and further in view of Tucker (U.S. 2003/0155354).

Regarding claim 1, Oshima et al. discloses a hermetically heat-sealed plastic food container with a vapor release seal part which opens at high pressures (See Abstract). Oshima et al. does not disclose markings which indicate when the vapor release seal part is opened. Tucker discloses a plastic food container which vents during microwave cooking ([0096]) and which is provided with differing colors for the lid and the base material in order to indicate whether the lid is opened (i.e. venting) or closed ([0137]-[0138]).

The inventions of both Oshima et al. and Tucker are drawn to the field of microwavable venting food containers and therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the materials for the lid and base material in the container of Oshima et al. by using different colors as taught by Tucker for the purposes of imparting indicating means for informing the user if the container is opened or closed.

Regarding claims 3, 6, 11, 14 and 15, modified Oshima et al. discloses all of the limitations as set forth above. Additionally, Tucker discloses first and second colors ([0137]).

Oshima et al. discloses the vapor release seal part is formed continuously along a peripheral edge seal of the container (Fig. 1). A plastic pouch is also disclosed in the invention of Oshima et al. (Fig. 6). The seal portion of the tray embodiment of Oshima et al. has flange parts and a lid with the heat seal part extending towards the inside of the container (Fig. 1 and C2, L5-25).

7. Claims 2, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oshima et al. (U.S. 4,834,247) in view of Tucker (U.S. 2003/00155354) as applied to claim 1 above and further in view of Isakson et al. (U.S. 4,640,838) and further in view of Scott et al. (U.S. 6,428,867).

Regarding claims 7 and 8, modified Oshima et al. discloses all of the limitations as set forth above. Modified Oshima et al. does not disclose that the valve member be separate from the peripheral edge or any particular indicia. Isakson et al. discloses a valve for a hermitically sealed pouch which is not located along the periphery (See Abstract and Fig. 2). The valve is of a similar type as that of Oshima et al. in that it is a flap held with an adhesive which is designed to disengage upon microwave cooking (Fig. 5 and C5, L15-45). The embodiment of Isakson et al. in Fig. 6 comprises a slit. The placement of the valve a distance away from the peripheral sealed edges of the container allows for food inside the container to be contained more effectively even after the valve is opened by the steam pressure (i.e. if the valve were along the side sealed edges when the container were removed from the microwave liquid could spill out the sides).

The inventions of both modified Oshima et al. and Isakson et al. are drawn to the field of microwaveable vented containers and therefore it would have been obvious to one having

ordinary skill in the art at the time of the invention to have modified the vent placement in the container of modified Oshima et al. by placing the valve a distance from the edges of the container as taught by Isakson et al. for the purposes of imparting improved food containing ability when the valve is opened.

Modified Oshima et al. does not disclose the patterned indicia as recited in instant claim 2. Scott et al. discloses a flap opening for a package container with indicia on the flap and the base material corresponding to each other as negative images (See Figs 2, 5 and 6). Scott et al. discloses that such a pattern reveals if the flap has been opened (i.e. tamper indicating) (C5, L65-C7, L5).

The inventions of both modified Oshima et al. and Scott et al. are drawn to the field of packaging containers with flap openings and therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the flap of modified Oshima et al. by adding the indicia as taught by Scott et al. for the purposes of imparting tamper indication.

8. Claims 9, 10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oshima et al. (U.S. 4,834,247) in view of Tucker (U.S. 2003/00155354) as applied to claims 1 and 11 above, and further in view of Sato (GB 2,358,175).

Regarding claims 9, 10, 12 and 13, modified Oshima et al. discloses all of the limitations as set forth above. Modified Oshima et al. does not explicitly disclose the limitations of claims 9, 10, 12 and 13. Sato discloses a standing, branched base type microwaveable pouch (Fig. 1) with a cutout portion (Fig. 4) for the venting seal (See Abstract, part 21 is the exhaust opening) which can be used as a pouring port (Fig. 5). The pouring port is utilized by bisecting the two

joining films which make up the vent. The invention of Sato is directed towards a specific marketable embodiment of a vented microwavable pouch which is directed towards the sterilization of, inter alia, baby feeding apparatuses (Page 1).

The inventions of both modified Oshima et al. and Sato are drawn to the field of microwavable venting pouches and therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the pouch of modified Oshima et al. by using the pouring application of the vent port as taught by Sato for the purposes of imparting improved utility and marketability as a sterilization tool.

***Response to Arguments***

9. Applicant's arguments of 04/23/09 are considered moot in light of the new grounds of rejection which were necessitated by applicant's amendments. Arguments which are still deemed to be relevant are addressed below.

10. Applicant argues that Tucker and Oshima et al. are directed towards different venting mechanisms and are therefore so unrelated as to prevent the combination of references. The examiner disagrees. The only teachings of Tucker which were combined with Oshima et al. were the teachings directed towards the use of differing colors to indicate whether two layers were touching each other or not (i.e. to indicate venting status). Since this teaching of Tucker is applicable to all steam vents which function by the release of two otherwise joined layers (i.e. as in both Tucker and Oshima et al. and indeed all of the other prior art references), the combination is valid.

11. Applicant argues that the combination of Isakson et al. and Oshima et al. would destroy the utility of Oshima et al. The examiner disagrees. Isakson et al. was being combined with

Oshima et al. not to replace the venting structure of Oshima et al. but merely to move the venting structure towards the center of the container and away from the peripheral seals so as to allow the venting of the container while still allowing the food product inside to be roughly handled without sloshing out of the peripheral vent on the sides of the container (i.e. as would obviously be the case in Oshima et al.). Oshima et al. shows in Fig. 5 that the heat sealed lid does not have to be placed on the periphery of the container for it to function and Isakson et al. shows that when the venting structure is separated from the containing structure, the product can vent while still sufficiently containing the food. Hence the combination would be to take the venting structure of Oshima et al. (i.e. from Fig. 5) and substitute that structure for the venting structure of Isakson et al. (i.e. in Fig. 4).

12. Applicant argues against the combination of Scott et al. with Oshima et al. on the basis that Scott et al. is directed towards tamper resistant flaps. The examiner disagrees. Scott et al. is broadly directed towards printed indicators which show whether two adjacent layers are opened or not and therefore would be applicable to the indicators for venting flaps. Applicant also argues that the combination does not teach every aspect as claimed since the printing of the structure is provided in between two layers and not separately printed on each layer. The examiner notes that the separate printing of the two patterns is not recited in the instant claims. Rather the claims only recite that the two films have a printing layer provided thereon. The printed layer of Scott et al., which is in between two layers, is still provided on both layers.

13. Applicant argues against the combination of Sato and Oshima et al. on the general grounds that the container of Sato "is different from both the container of the present invention and that of Oshima" however the examiner does not see the differences the applicant is alluding

to. Both inventions are directed towards steam venting structures and Sato's use of the vent as a pouring spout is applicable to the structure of Oshima et al. Moreover, one having ordinary skill in the art would have independently found it obvious to have used the steam venting structure of Oshima et al. as a pouring spout since the vent would provide controlled release of the contents of the container.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL B. NELSON whose telephone number is (571) 270-3877. The examiner can normally be reached on Monday through Thursday 6AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David R. Sample/
Supervisory Patent Examiner, Art Unit 1794

/MN/
05/07/09